

Editor's note: appealed - aff'd, sub nom. Witt v. U.S., Civ.No. 80-210 (D. Nev. Feb. 13, 1981); aff'd, No. 81-5147 (9th Cir. July 20, 1982)

GENEIVA NELL MASTON SMITH ET AL.

IBLA 80-126, IBLA 80-169,
IBLA 80-170, IBLA 80-171,
IBLA 80-173, IBLA 80-182

Decided June 16, 1980

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications, N 25553 etc.

Affirmed.

1. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

APPEARANCES: Geneiva Nell Maston Smith, Karen Louise Maston Queen, Vertis W. Banks, Moss J. Witt, Joyce F. Perrin, and Marjorie Nadine Underwood, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The appellants listed below 1/ filed applications for Indian allotments on behalf of minor children, pursuant to section 4 of the General Allotment Act (Act) of February 8, 1887, as amended, 24 Stat. 389 25 U.S.C. § 334 (1976).

1/ IBLA 80-126, Geneiva Nell Maston Smith for daughter Sherri Lynne Louviere, No. N 25553, T. 18 S., R. 60 E., Mount Diablo meridian, NE 1/4 sec. 30.

IBLA 80-169, Karen Louise Maston Queen for three children: son Daniel Gene Queen, No. N 25554, T. 18 S., R. 60 E., Mount Diablo meridian, SE 1/4 sec. 19; son Clifford Aaron Queen, No. N 25555, T. 18 S., R. 60 E., Mount Diablo meridian, SW 1/4 sec. 19; daughter Brenda Louise Queen, No. N 25556, T. 18 S., R. 60 E., Mount Diablo meridian, NW 1/4 sec. 19.

The Bureau of Land Management (BLM) issued the same decision in response to each application saying:

The regulations contained in 43 CFR 2531.1(d) state that ". . . The law only permits one eligible himself under the fourth section to take allotments thereunder on behalf of minor children or those to whom he stands in loco parentis"

There is no documentation in our file as to the eligibility of you to make application under the fourth section of the Act. Therefore, your application is hereby rejected.

Because the same decision and the same issues are involved in each appeal we have, sua sponte, consolidated the appeals for consideration.

The appellants assert that the certificate of eligibility is unnecessary. Appellants Witt, Perrin, and Underwood also list additional statutes under which their applications were filed.

[1] Section 4 of the Act authorizes the Secretary of the Interior to issue allotments to Indians where they have made settlement on available public lands, Thurman Banks, 22 IBLA 205 (1975). Allotments may be selected by heads of families for minor children. 25 U.S.C. §§ 332, 334. Pursuant to the Act, the Department of the Interior promulgated regulations at 43 CFR Part 2530. The regulation quoted above in the BLM decisions implements the Act and indicates that only an eligible Indian parent or guardian may apply for allotments for minor children. The regulation 43 CFR 2531.1(b) requires a showing of eligibility as follows:

fn. 1 (continued)

IBLA 80-170, Vertis W. Banks for three daughters: Mia Leann Banks, No. N 25778, T. 18 S., R. 60 E., Mount Diablo meridian, SW 1/4 sec. 20; LeShelle Lee Banks, No. N 25779, T. 18 S., R. 60 E., Mount Diablo meridian, SE 1/4 sec. 20; Stephanie Joy Banks, No. N 25780, T. 18 S., R. 60 E., Mount Diablo meridian, NW 1/4 sec. 20.

IBLA 80-171, Moss J. Witt for niece, Tina D. Corbo, No. N 24918, T. 18 S., R. 59 E., Mount Diablo meridian, NW 1/4 sec. 7.

IBLA 80-173, Joyce F. Perrin for son, Gregory S. Perrin, No. N 25930, T. 18 S., R. 59 E., Mount Diablo meridian, SW 1/4 sec. 8.

IBLA 80-182, Marjorie Nadine Underwood for two children: Kathleen D. Underwood, No. N 25336, T. 21 S., R. 59 E., Mount Diablo meridian, NE 1/4 (lot 1, N 1/2 NE 1/4, SW 1/4 NE 1/4) sec. 10; Earl D. Underwood, No. N 25337, T. 21 S., R. 59 E., Mount Diablo meridian, SW 1/4 sec. 10.

Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).

43 CFR 2531.2(b) adds that: "(b) [b]lack forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, from land offices of the Bureau of Land Management."

None of the appellants submitted the required certificate. Instead, in the application blank space specifically requesting the number of the certificate issued by the Bureau of Indian Affairs (BIA), appellants entered, "8 U.S.C. § 1401 Const. Amend. 5." This does not comply with the requirements. Neither the cited statute, which refers to United States citizenship, nor the constitution is in issue here.

The additional statutes that some of the appellants cite do not obviate the need for this certificate of eligibility. Certain of these statutes amend the General Allotment Act, supra. The rest, 18 Stat. 420, 43 U.S.C. § 189 (1976), and 23 Stat. 96, 43 U.S.C. § 190 (1976), referring to Indian homesteads, were repealed in 1976 by the Federal Land Policy and Management Act of 1976, 90 Stat. 2787.

The appellants also referred to 8 U.S.C. § 1401 (1976) and to their citizenship in response to the application question asking for a petition for classification. This petition is necessary where lands have not yet been opened for disposition. See 43 CFR 2531.2.

BLM properly rejected appellants' applications for the procedural reasons given. There may be additional reasons which were not expressed. If appellants are going to refile on behalf of minor children we strongly advise that in addition to acquiring the required certification from BIA they also enlist help from that agency and from BLM to assure that all requirements for filing the application and petitioning for classification are met. We make no ruling on whether any individual applicant in these cases is qualified. Our ruling is that each applicant has failed to meet the preliminary procedural requirements. Nothing that the appellants have stated obviates their

need to comply with the regulations implementing section 4 of the General Allotment Act. The fact they are citizens is irrelevant here. They are not applying under a law that only requires United States citizenship. Allotments for minor children may only be granted under the specific requirements of the General Allotment Act and implementing regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

